

### **DETAILED ACTION**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 2/27/09 has been entered.

Claims 60-82, 95-103, and 111-114 are pending. It is noted that applicant did not submit a complete listing of the pending claims. In the future, the examiner respectfully asks that a complete listing of the claims be submitted with any response to minimize the chances that the wrong claims are examined or published when the application is ready for allowance.

### ***Information Disclosure Statement***

All the documents listed in the IDS submitted on 2/27/09 were considered.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422

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F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 60, 67, 76, and 95 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 2 of U.S. Patent No. 7,248,719. Although the conflicting claims are not identical, they are not patentably distinct from each other because the limitations found in the claims of the current application anticipate the limitations found in the claims of US 7,248,719.

Claims 60, 67, 76, and 95 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 18, and 22 of U.S. Patent No. 6,154,879. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the current application anticipates the limitations found in claims 18 and 22 of US 6,154,879. Further, the only substantial difference between the claims in the current application and claim 1 of US 6,154,879 is that claim 1 of the '879 patent recites that the biometric authentication done at an automated teller machine. However, automated teller machines were well known in the art and it was also well known that one must provide some form of authentication into an ATM to access an account. Usually the ATM authenticates via use of a pin. It would have been obvious to one skilled in the art to substitute biometric

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authentication in place of a pin to access an account via an ATM because doing so is simple substitution of one known element for another to achieve predictable results.

Claims 60-82, 95-103, and 111-114 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7, 15-19, 21-22, and 24-25 of copending Application No. 11/763,334. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the current application anticipate the limitations of the claims of the copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PONNOREAY PICH whose telephone number is (571)272-7962. The examiner can normally be reached on 9:00am-4:30pm Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kim Vu can be reached on 571-272-3859. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ponnoreay Pich/  
Examiner, Art Unit 2435